

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

RALPH R. NELSON,	)	
	)	
Plaintiff,	)	Civil Action No. 04CV10845GAO
	)	
v.	)	
	)	
TONYA MARIE COFFEY (NELSON),	)	
	)	
et al.,	)	
	)	
Defendants.	)	

**FEDERAL DEFENDANT’S MOTION TO DISMISS FOR FAILURE OF SERVICE**

Now here comes the defendant, Dr. Sherri Heller, Commissioner of the Office of Child Support Enforcement ("OCSE") for the United States Department of Health and Human Services (hereafter, the "Federal Defendant"),<sup>1</sup> who hereby moves to dismiss plaintiff Ralph Nelson’s Complaint for failure of service in compliance with Fed. R. Civ. P. 4(i), 4(m), and 12(b)(5). As grounds for this motion, the Federal Defendant asserts the following:

1. Plaintiff filed the instant Complaint on April 28, 2004 —more than 210 days ago.
2. Plaintiff failed to serve either the United State’s Attorney’s Office or the Attorney General of the United States at all, and failed to properly serve either the United States Department of Health and Human Services ("HHS") or Commissioner Heller, in accordance with Rule 4(i) of the Federal Rules of Civil Procedure.

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<sup>1</sup> This motion is not intended to be a responsive pleading. By the filing of this motion, the Federal Defendant is not waiving any of the procedural, affirmative, or other waivable and non-waivable defenses available to her in the normal course of filing a responsive pleading. The Federal Defendant intends to raise those defenses when she answers or otherwise responds to the Complaint.

3. As more than 210 days have elapsed since the filing of the Complaint, Plaintiff failed to effect proper service on the Federal Defendant within 120 days as required by Fed. R. Civ. P. 4(m).

4. Accordingly, the Federal Defendant has not been brought within the jurisdiction of this Court and Plaintiff's Complaint against the Federal Defendant must be dismissed for failure of service.

WHEREFORE, as service has not been accomplished, the Federal Defendant respectfully requests that this Court grant its motion to dismiss for failure of service.

Respectfully submitted,

The Federal Defendant, Sherri Heller,  
Commissioner, Office of Child Support  
Enforcement for the United States Department of  
Health and Human Services

By her attorney,

MICHAEL J. SULLIVAN  
United States Attorney

By: /s/Gina Y. Walcott-Torres  
Gina Y. Walcott-Torres  
Assistant United States Attorney  
John Joseph Moakley U.S. Courthouse  
One Courthouse Way, Suite 9200  
Boston, Mass. 02110  
617-748-3100

**CERTIFICATE OF SERVICE**

This is to certify that a true copy of the above document was served upon the parties in this action by first class mail, postage prepaid, on this 9<sup>th</sup> day of December 2004.

/s/Gina Y. Walcott-Torres  
Gina Y. Walcott-Torres  
Assistant U.S. Attorney

**CERTIFICATE OF LOCAL RULE 7.1(A)(2) COMPLIANCE**

The undersigned counsel for Defendant respectfully requests a waiver of L.R. 7.1(A)(2) as plaintiff is unable to contact plaintiff because he has failed to provide his phone number. Additionally, Plaintiff is *pro se*.

/s/Gina Y. Walcott-Torres  
Gina Y. Walcott-Torres  
Assistant U.S. Attorney